

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis E. LUCIANI Jr. et al.	§	Confirmation No.:	9421
		§		
Serial No.:	10/728,465	§	Group Art Unit:	2451
		§		
Filed:	December 12, 2003	§	Examiner:	K. Q. Dinh
		§		
For:	Method And System For	§	Docket No.:	200314490-1
	Switching Between	§		
	Remote Console Sessions	§		

APPEAL BRIEF

Mail Stop Appeal Brief – Patents

Date: July 14, 2009

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office action dated May 15, 2009, Appellants hereby submit this Appeal Brief in connection with the above-identified application. A Notice of Appeal is filed concurrently herewith.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas. HPDC is a wholly owned affiliate of Hewlett-Packard Company (HPC). The Assignment from the inventors to HPDC was recorded on December 5, 2003, at Reel/Frame 014776/0913.

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II. RELATED APPEALS AND INTERFERENCES

The technology of the current application is related to U.S. patent application number 10/729,676 for which an Appeal Brief was filed May 21, 2009.

III. STATUS OF THE CLAIMS

Originally filed claims: 1-20.
Claim cancellations: 7-13.¹
Added claims: None.
Presently pending claims: 1-6 and 14-20.
Presently appealed claims: 1-6 and 14-20.

¹ Cancelled in view of a restriction requirement.

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IV. STATUS OF THE AMENDMENTS

No claims were amended after the final Office action dated May 15, 2009.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

This section provides a concise explanation of the subject matter defined in each of the independent claims, referring to the specification by page and line number or to the drawings by reference characters as required by 37 C.F.R. § 41.37(c)(1)(v). Each element of the claims is identified with a corresponding reference to the specification or drawings where applicable. The specification references are made to the application as filed by Appellants. Note that the citation to passages in the specification or drawings for each claim element does not imply that the limitations from the specification and drawings should be read into the corresponding claim element. Also note that these specific references are not exclusive; there may be additional support for the subject matter elsewhere in the specification and drawings.

The various embodiments are directed to methods and systems for switching between remote console sessions.² At least some of the various embodiments are methods as in claim 1:³

1. A method comprising:
logging into a remote computer by way of a management processor that resides within the remote computer, the management processor different than a central processing unit of the remote computer, and the logging into the remote computer initiates a console session being a default remote console session; {9, [0027], lines 1-18; Figure 4 (logging into remote computer)} {3, [0015], lines 1-22; Figure 1, element 102 (management processor)} and then
switching the console session between a default remote console session and a non-default remote console session. {9, [0027], lines 1-18; Figure 4 } {10, [0028], lines 1-16; Figure 4}

² Specification Title.

³ Citations to the Specification take the form {[page], [paragraph], lines [lines within the paragraph]}.

Yet still other illustrative embodiments are methods as in claim 2, having all the limitations of claim 1 and further reciting:

2. The method of claim 1, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session. **{7, [0023], lines 1-12}**

Other illustrative embodiments are systems as in claim 14:

14. A computer system comprising a means for providing remote console⁴ to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session. **{3, [0015], lines 1-22; Figure 1, elements 102, 106, 118} {9, [0027], lines 1-18; Figure 4 } {10, [0028], lines 1-16; Figure 4}**

Yet still other illustrative embodiments are systems as in claim 15, having all the limitations of claim 14, and further reciting:

15. The computer system of claim 14, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session. **{7, [0023], lines 1-12}**

⁴ This limitations is specifically identified as a means-plus-function limitation under 35 USC § 112, sixth paragraph.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-6 are unpatentable under 35 USC § 103(a) over Simionescu et al. (U.S. Pub. No. 20030084337, hereafter "Simionescu") and Antonin et al. (U.S. Pub. No. 20020138431, hereafter "Antonin").

Whether claims 14-20 are unpatentable under 35 USC § 103(a) over Simionescu and Zhu et al. (U.S. Pub. No. 20030084337, hereafter "Zhu").⁵

⁵ It is noted that the final Office action also contains a provisional double patenting rejection, but inasmuch as the rejection is merely provisional, Appellants do not appeal the rejection.

VII. ARGUMENT

A. Section 103 rejection of claims 1-6 over Simionescu and Antonin

1. Claims 1 and 4-6

Claims 1 and 4-6 stand rejected as allegedly obvious over Simionescu and Antonin. Claim 1 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Simionescu is directed to remotely controlled failsafe boot mechanism and manager for a network device.⁶ Simionescu's Figure 1 is reproduced immediately below for convenience.

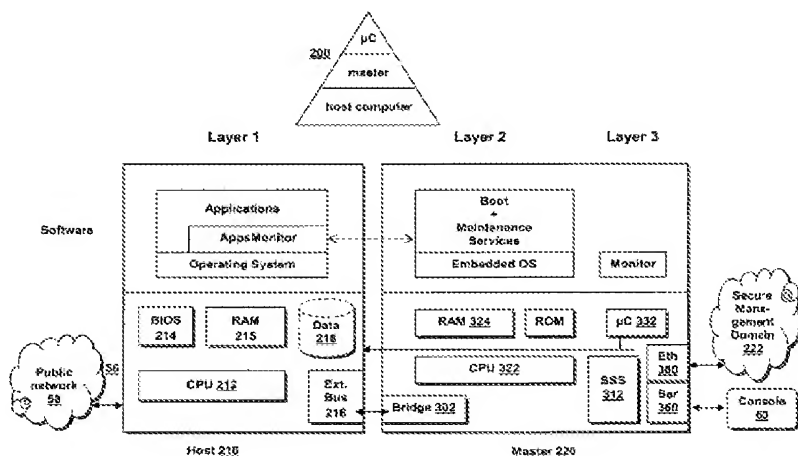


Fig. 2

In particular, Simionescu discloses a host computer 210 and master device 220 coupled together.⁷ The master device 220 enables various functionality, such as governing the boot process of the host 210.⁸ The Office action places much emphasis on the “normal” and “upgrade mode” of the master device 220, and thus the description now turns to the “normal” and “upgrade mode” functionality.

⁶ Simionescu Title.

⁷ Simionescu Paragraph [0027].

⁸ See, e.g., Simionescu Paragraph [0027]

Simionescu's Figure 3 is reproduced immediately below for convenience of the discussion.

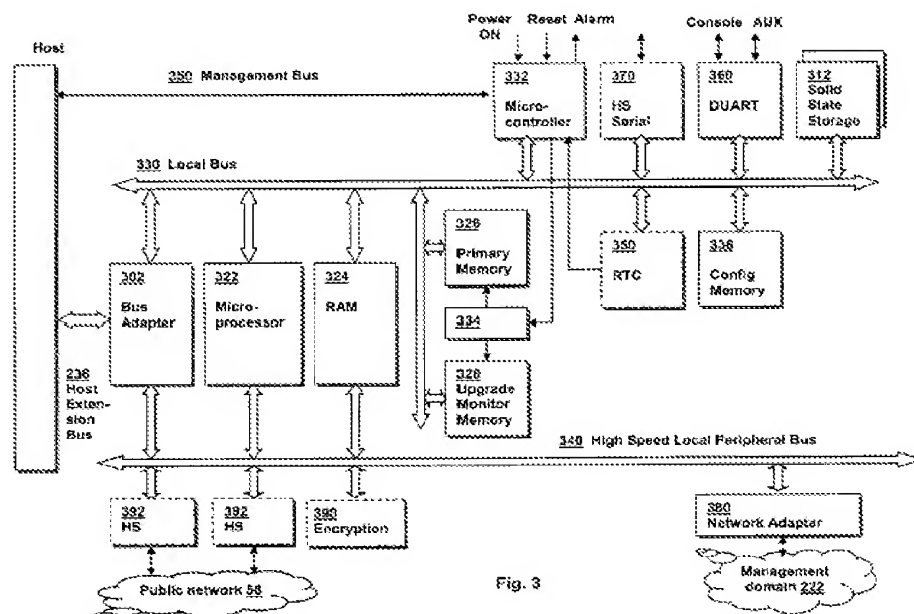


Fig. 3

Simionescu's Figure 3 shows in greater detail the internal components of the master device 220.⁹ As illustrated in Figure 3, "the master device includes a primary non-volatile memory 326 which contains the firmware of the master device (operating system and services) and governs operation of the master."¹⁰ The operating system and services are apparently copied from the non-volatile primary memory 326 (hereafter just "primary memory") to the RAM 324 for execution by the processor 322.¹¹

Simionescu contemplates the ability to upgrade or change the programs to be executed within the master device held by the primary memory 326. "In order to place the primary memory 326 into a reprogrammable mode, the master device must change its state of operation from a normal mode 410 to [an]

⁹ Simionescu Paragraph [0033].

¹⁰ Simionescu Paragraph [0035].

¹¹ Simionescu Paragraph [0033].

upgrade mode 420... .”¹² Changing from normal mode 410 to upgrade mode 420 requires resetting both the master device 220 and the host device 210 within which the master device 220 is coupled.¹³ In the upgrade mode, the only software executable by the processor 322 is the software held in the upgrade monitor memory 328, and that software only allows downloading of images and burning of images to the primary memory 326.

The upgrade monitor code [in the memory 328] provides intentionally unsophisticated and preferably bug-free code that provides commands to download files from remote storage (via simple protocol like TFTP) and remotely reprogram the primary memory 326.¹⁴

Thus, in the upgrade mode communication between the master device 220 and the host device 210 is limited to copying from peripheral devices of the host device 210 images to be burned to the primary memory 326. In other words, the normal mode and upgrade mode do not refer to types of console sessions between the master device 220 and the host device 210. Rather, the normal mode and upgrade mode refer to an operational state of the master device where the contents of the primary memory 326 are protected from change (normal mode) and where the contents of the primary memory 326 may be changed (upgrade mode). In fact, given the limited functionality in the upgrade mode, it does not appear a console session is even possible between the master device 220 and the host device 210 in the upgrade mode.

Representative claim 1, by contrast, specifically recites:

1. A method comprising:
logging into a remote computer by way of a management processor that resides within the remote computer, the management processor different than a central processing unit of the remote computer, and the logging into the remote computer initiates a console session being a default remote console session; and then

¹² Simionescu Paragraph [0036].

¹³ Simionescu Paragraph [0036].

¹⁴ Simionescu Paragraph [0038].

switching the console session between a default remote console session and a non-default remote console session.

Appellants respectfully submit that Simionescu and Antonin fail to teach or suggest such a system. The Office action places exclusive reliance on the normal mode and upgrade mode regarding the default and non-default console sessions.¹⁵ In Simionescu, the normal mode and upgrade mode refer to the ability or inability to update the primary memory 326 of the master 220 device. Given the limited functionality of the master device 220 in the upgrade mode, it does not appear a console session is even possible between the master device 220 and the host device 210 in the upgrade mode. Thus, even if hypothetically the teachings of Antonin are precisely as the Office action suggests (which Appellants do not admit), Simionescu and Antonin still fail to teach or suggest “switching the console session between a default remote console session and a non-default remote console session.”

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed, and the claims set for issue.

2. Claims 2 and 3

Claims 2 and 3 stand rejected as allegedly obvious over Simionescu and Antonin. Claim 2 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Representative claim 2 recites:

2. The method of claim 1, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session.

¹⁵ Office action of May 15, 2009, Page 3, numbered paragraph 8.

The Office action refers to Simionescu's Paragraphs [0040] to [0042] and [0047] to [0049] regarding these limitations.¹⁶ Paragraph [0040] of Simionescu appears to describe alternative embodiments where the master device 220 is external to the host device 210. Paragraph [0041] of Simionescu appears to describe the ability of the master device 220 to control the boot process of the host device 210, and in particular the mechanism of providing a bootable software image from the master device 220 to the host device 210. Paragraph [0042] of Simionescu appears to discuss a real time clock (RTC) 350 that enables time-based restart of the host device 210 and master device 220. Paragraph [0047] of Simionescu appears to discuss how software executes in the master device 220. Paragraph [0048] of Simionescu appears to discuss storing boot images for the host device 210 in the master device 220, and providing the boot images to the host device 210 from the master device 220. Paragraph [0049] of Simionescu appears to discuss assigning a master device 220 to multiple host devices 210. None of the cited paragraphs appear to be directed to console sessions as those terms are defined in Appellants specification. For this reason alone the rejections should be overturned and the claims set for issue.

Moreover, even if hypothetically assumed that the teachings of the cited paragraphs are console sessions (which Appellants do not admit) as those terms are defined in Appellants' specification, thus the Office action fails to point out which of these wildly varying teachings is the claimed "hardware-based remote console session" and which of these teachings is the claimed "software-based remote console session." For this additional reason the rejections should be overturned and the claims set for issue.

Further still, even if hypothetically assumed that the cited paragraphs teach distinct hardware-based console sessions and software-based console sessions (which Appellants do not admit), the Office action fails to a teaching in Simionescu or the other cited art that the hardware-based console session is

¹⁶ Office action of May 15, 2009, Page 4, first full paragraph.

default, and the software-based console session is non-default. For this additional reason the rejections should be overturned and the claims set for issue.

Yet further still, even if hypothetically assumed that the cited paragraphs teach a hardware-based console session as default and a software-based console session as non-default (which Appellants do not admit), then Office action fails to point out a teaching in Simionescu or the other cited art of the diametric opposite of a software-based session as default and a hardware-based console session as non-default, as in claim 3.

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed, and the claims set for issue.

B. Section 103 rejection of claims 14-20 over Simionescu and Zhu

1. Claims 14 and 17-20

Claims 14 and 17-20 stand rejected as allegedly obvious over Simionescu and Zhu. Claim 14 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Representative claim 14 recites:

14. (Original) A computer system comprising a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.

Appellants respectfully submit that Simionescu and Zhu fail to teach or suggest such a system. The Office action places exclusive reliance on the normal mode and upgrade mode regarding the default and non-default console sessions.¹⁷ In Simionescu, the normal mode and upgrade mode appear to refer only to the ability or inability to update the primary memory 326 of the master 220 device. Given the limited functionality of the master device 220 in the upgrade mode, it

¹⁷ Office action of May 15, 2009, Page 5, numbered paragraph 9.

does not appear a console session is even possible between the master device 220 and the host device 210 in the upgrade mode. Thus, even if hypothetically the teachings of Zhu are precisely as the Office action suggests (which Appellants do not admit), Simionescu and Zhu still fail to teach or suggest “a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.”

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed, and the claims set for issue.

2. Claims 15 and 16

Claims 15-16 stand rejected as allegedly obvious over Simionescu and Zhu. Claim 15 is representative of this group of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (e.g., actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Representative claim 15 recites:

15. (Original) The computer system of claim 14, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session.

The Office action refers to Simionescu's Paragraphs [0040] to [0042] and [0047] to [0049] regarding these limitations.¹⁸ Paragraph [0040] of Simionescu appears to describe alternative embodiments where the master device 220 is external to the host device 210. Paragraph [0041] of Simionescu appears to describe the ability of the master device 220 to control the boot process of the host device 210, and in particular the mechanism of providing a bootable software image from the master device 220 to the host device 210. Paragraph [0042] of Simionescu appears to discuss a real time clock (RTC) 350 that enables time-based restart of the host device 210 and master device 220. Paragraph [0047] of Simionescu appears to discuss how software executes in the master device 220. Paragraph

¹⁸ Office action of May 15, 2009, Page 6, paragraph spanning pages 5 and 6.

[0048] of Simionescu appears to discuss storing boot images for the host device 210 in the master device 220, and providing the boot images to the host device 210 from the master device 220. Paragraph [0049] of Simionescu appears to discuss assigning a master device 220 to multiple host devices 210. None of the cited paragraphs appear to be directed to console sessions. For this reason alone the rejections should be overturned and the claims set for issue.

Moreover, even if hypothetically assumed that the teachings of the cited paragraphs are console sessions (which Appellants do not admit) as those terms are defined in Appellants' specification, the Office action still fails to point out which of these wildly varying teachings is the physical structure corresponding to the claimed "hardware-based remote console session" and which of these teachings is the claimed "software-based remote console session." For this additional reason the rejections should be overturned and the claims set for issue.

Further still, even if hypothetically assumed that the cited paragraphs teach structure with distinct hardware-based console sessions and software-based console sessions (which Appellants do not admit), the Office action fails to point out the physical structure corresponding to the claimed hardware-based console session as default, and the physical structure corresponding to the claimed software-based console session as non-default. For this additional reason the rejections should be overturned and the claims set for issue.

Yet further still, even if hypothetically assumed that the cited paragraphs teach structure having a hardware-based console session as default and a software-based console session as non-default (which Appellants do not admit), then Office action fails to point out the diametric opposite of a software-based session as default and a hardware-based console session as non-default, as in claim 16.

Based on the foregoing, Appellants respectfully submit that the rejections of the claims in this grouping be reversed, and the claims set for issue.

C. Conclusion

For the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/mes/

Mark E. Scott
PTO Reg. No. 43,100
CONLEY ROSE, P.C.
(512) 610-3410 (Phone)
(512) 610-3456 (Fax)
ATTORNEY FOR APPELLANTS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
Legal Dept., M/S 35
P.O. Box 272400
Fort Collins, CO 80527-2400

VIII. CLAIMS APPENDIX

1. (Previously presented) A method comprising:
logging into a remote computer by way of a management processor that resides within the remote computer, the management processor different than a central processing unit of the remote computer, and the logging into the remote computer initiates a console session being a default remote console session; and then
switching the console session between a default remote console session and a non-default remote console session.
2. (Original) The method of claim 1, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session.
3. (Original) The method of claim 1, wherein the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session.
4. (Original) The method of claim 1, wherein the default remote console session is adjustable between a hardware-based remote console session and a software-based remote console session.
5. (Original) The method of claim 1, wherein switching further comprises:
determining availability of the default remote console session;
disabling the non-default remote console session; and
enabling the default remote console session.

6. (Original) The method of claim 1, wherein the logging step further comprises logging into the management processor comprising an application-specific integrated circuit, a microcontroller and a memory for communication between the remote computer and the management processor.

7.–13. (Cancelled).

14. (Original) A computer system comprising a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.

15. (Original) The computer system of claim 14, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session.

16. (Original) The computer system of claim 14, wherein the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session.

17. (Original) The computer system of claim 14, wherein the default remote console session is adjustable between a software-based remote console session and a hardware-based remote console session.

18. (Original) The computer system of claim 14, wherein the means for providing further comprises:

- an application-specific integrated circuit; and
- a memory coupled to the application-specific integrated circuit.

19. (Original) The computer system of claim 18, wherein the memory enables data transfer between the computer system and the means for providing.

20. (Original) The computer system of claim 14, wherein the means for providing:

- ascertains availability of the default remote console session;
- ensures the coupling of the computer system and the means for providing;
- disables the non-default remote console session; and
- enables the default remote console session.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.